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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

PETITION FOR REHEARING SUR MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG,
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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paul Ginsburg's Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court respectfully represents:

1. On February 24, 1964, this Honorable Court entered the following Order in the above entitled case: "The motion for docketing and submission of petitioner's motion to remand for consideration on the merits is denied".

2. It was quite evident from your petitioner's Motion for Docketing and Submission of Petitioner's Mo-

tion to Remand for Consideration on the Merits by the Court; that the Clerk of this Court and his Chief Deputy Clerk had deliberately refused to docket and submit to this Honorable Court for its consideration his timely and authoritatively self-sustaining Motions to Remand.

3. Although the duties and functions of the Clerks are strictly ministerial, the said Clerks nevertheless in so doing were exercising judicial functions. In other words, instead of docketing those Motions to Remand and submitting them to the Court for a judicial adjudication in accordance with the Constitution and laws of the United States and the usual and accepted practice; the Clerks themselves examined those pleadings and "judicially" concluded (erroneously) that they actually constituted petitions for rehearing (although applicable decisions of this Honorable Court cited therein made it plain beyond question that those pleadings truly were motions to remand), and thus they refused to docket those pleadings and submit them to this Honorable Court as they were duty bound to do.

4. The petitioner further alleged in the said Motion that those actions of the Clerks either constituted an unlawful usurpation by them of this Honorable Court's judicial functions, or had been an unauthorized delegation by this Court of judicial functions to the Clerks; and that in either event, the Clerk's actions were a nullity.

5. The petitioner argued therein that one of the great dangers in allowing Clerks to make judicial decisions is the fact that they supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the

justices of this Honorable Court perform their judicial functions behind the closed doors of their chambers, where they are unapproachable.

6. Because the petitioner had contended that those actions of the Clerks resulted either from an unlawful usurpation or delegation of judicial functions and duties, this Honorable Court's Order entered February 24, 1964, has made it crystal clear that those judicial functions actually were delegated, incredible as that would seem.

7. Litigants like your petitioner who have entrusted the consideration and determination of their extremely important rights to the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, should not be compelled by them to be subjected to the prejudicial whims and caprice of Clerks.

WHEREFORE, this Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court should be granted.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court, pursuant to the provisions of paragraph 1 of Rule 58, is presented in good faith and not for delay.

PAUL GINSBURG
Counsel for Petitioner